

# Notice of Allowability

Application No.

10/806,288

Examiner

S. Devi, Ph.D.

Applicant(s)

GUSS ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 06/14/06.
2. ☒ The allowed claim(s) ~~is~~ are 37-39, now renumbered as claims 1-3 respectively.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 09/147,405.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **ATTACHMENT TO NOTICE OF ALLOWABILITY**

### **Request for Continued Examination**

1) A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. 1.114, and the fee set forth in 37 C.F.R. 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 C.F.R. 1.114. Applicants' submission filed on 06/14/06 has been entered.

### **Applicants' Amendment**

2) Acknowledgment is made of Applicants' amendment filed 06/14/06 in response to the non-final Office Action mailed 12/14/05. Applicants have amended the specification and the claims.

### **Examiner's Amendment**

3) An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. The authorization to prepare this Examiner's amendment was provided by Mr. Aaron B. Schulman in a telephonic interview on 17 August 2006.

This application has been amended as indicated below:

(a) Claims 30 and 36 have been canceled.

(b) New claims 37-39 have been added as shown below:

--Claim 37 (New). An isolated antibody that binds to a *Staphylococcus epidermidis* polypeptide consisting of the amino acid sequence of SEQ ID NO: 13.

Claim 38 (New). The antibody of claim 37; wherein the polypeptide is further fused to glutathione-S-transferase (GST).

Claim 39 (New). The antibody of claim 37, wherein the polypeptide is encoded by the nucleotide sequence of SEQ ID NO: 12.--

### **Status of Claims**

4) New claim 36 has been added via the amendment filed 06/14/06.

Claim 30 has been amended via the amendment filed 06/14/06.

Claims 30 and 36 have been canceled via this Examiner's amendment.

Claims 37-39 are pending and are under examination.

### **Rejection(s) Moot**

5) The rejection of claim 30 made in paragraph 14 of the Office Action mailed 03/21/05 and maintained in paragraph 13 of the Office Action mailed 12/14/05 under 35 U.S.C § 102(b) as being anticipated by Palker *et al.* (*PNAS* 85: 1932-1936, 1988, already of record) as evidenced by McGuinness *et al.* (*Mol. Microbiol.* 7: 505-514, 1993, already of record), is moot in light of the cancellation of the claim.

6) The rejection of claim 30 made in paragraph 14 of the Office Action mailed 12/14/05 under 35 U.S.C § 102(b) as being anticipated by Espersen *et al.* (*APMIS* 5: 471-478, 1990) as evidenced by Pei *et al.* (*Infect. Immun.* 67: 4525-4530, 1999) and Nilsson *et al.* (*Infect. Immun.* 66: 2666-2673, 1998), is moot in light of the cancellation of the claim.

### **Relevant Art**

7) The art made of record and not relied upon in any of the rejections is considered pertinent to Applicants' disclosure:

Foster *et al.* (US 6,841,154) disclosed isolated antibodies against *S. aureus*, which cross-react with a protein released from the cell surface of *S. aureus* HB. See description for Figure 6; Paragraph above Table 3; and Table at the bottom of column 38.

### **Remarks**

8) Claims 37-39, now renumbered as claims 1-3 respectively, are allowed.

9) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Central Fax number, (571) 273-8300, which receives transmissions 24 hours a day and 7 days a week.

10) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**11)** Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

August, 2006

  
S. DEVI, PH.D.  
PRIMARY EXAMINER